Mohd Aslam Khan bin Syed Gulam (as administrator of the estate of De Bonis Non Sikandar s/o Fajar Ellahi) v C Mageswary a/p Chandran (representative of the estate of Chandaran a/l Narayanasamy, deceased) & Ors

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-01(NCVC)(W)-530–08 OF 2018
ABDUL RAHMAN SEBLI, MARY LIM AND HASNAH HASHIM JJCA
15 OCTOBER 2019

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Land Law — Indefeasibility of title and interests — Transfer of land — Land was purportedly transferred by its true owner to transferee almost 50 years after true owner died — Whether on the face of it fraud had taken place — Whether action by administrator of deceased's estate to set aside the transfer was not time-barred as suit was promptly filed after administrator discovered the fraud — Whether purported transferee of the land and his beneficiaries did not obtain any good title to the land from the outset but held the land as constructive trustees for deceased's estate — Whether presumption of death order issued by High Court was conclusive proof of date of death of person stated therein until the order was set aside — Whether burden of proving that the person declared to be dead under the order was still alive was on those who asserted the same — Limitation Act 1953 s 29

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Sikandar s/o Fajar Ellahi ('Sikandar') was the original owner of a piece of land ('the land'). When Sikandar died in 1940, one Merlhat Han ('Merlhat') applied for and obtained a grant of letters of administration ('LA') of Sikandar's estate in 1941. Merlhat then applied for the land to be registered in his name qua administrator. Merlhat died on 4 September 1952 leaving Sikandar's estate unadministered. In January 2016, the appellant, who was Sikandar's grandson, obtained a grant of LA de bonis non for Sikandar's estate based on the grant of LA that Merlhat had obtained in 1941. On conducting a search at the land office, the appellant discovered that pursuant to a memorandum of transfer the land was purportedly transferred by Merlhat on 29 May 2001 to one Chandaran a/l Narayanasamy ('Chandaran'). Following Chandaran's death in 2002 the land was transmitted to one Annapoorany a/p Letchumanan and thereafter a 13/15th part of the property was transmitted to the fifth respondent while a 2/15th part was transferred to the sixth respondent. The appellant's instant action was to set aside all purported interests and ownership of the respondents (excepting the third and fourth respondents) over the land on the grounds of fraud, forgery and illegality. The appellant contended that since Merlhat died on 4 September 1952, he could not have transferred the land to Chandaran on 29 May 2001. Furthermore, there was no court order to show that Merlhat, as administrator of Sikandar's estate, had obtained consent

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of court to transfer or deal with the property. Merlhat's identity card number on the purported instrument of transfer of the land favouring Chandaran was also non-existent. The appellant argued that the relevant respondents therefore held the land purely as constructive trustees for Sikandar's estate. The trial judge dismissed the appellant's claim holding that he had failed to prove fraud on balance of probabilities and that the claim was time-barred. In the instant appeal against the decision, the appellant submitted that the trial judge was wrong to have held that the action was time-barred, that the appellant lacked locus standi to bring the action, that the transfer of the land to Chandaran was not tainted with fraud and/or illegality and that Chandaran's title to the property was indefeasible.

Held, unanimously allowing the appeal, setting aside the High Court's decision and entering judgment for the appellant:

(1) In the instant case, there was fraud because if Merlhat had died on 4 September 1952 he could not have transferred the property to Chandaran on 29 May 2001 (see para 19).

(2) Section 29 of the Limitation Act 1953 clearly provided that where the action was based on fraud, the period of limitation 'shall not begin to run until the plaintiff has discovered the fraud'. The appellant's case was that he only discovered the fraud on or about 11 March 2016 when he did a land search on the property and found that Chandaran was registered as proprietor of the land. This crucial part of the appellant's evidence was not challenged at all in cross-examination and was therefore deemed to have been admitted. Therefore, the instant suit which was filed on 2 December 2016 was within the suspended limitation period prescribed by s 29 of the Limitation Act 1953. Although the appellant had knowledge of his beneficial interest in the property since 1952, time for the purposes of the Limitation Act did not begin to run until after the fraud was discovered. Prior to that discovery, the appellant had no reason to suspect that there was any fraudulent dealing involving the land as it was registered in Merlhat's name as administrator of Sikandar's estate (see paras 18 & 26–28).

(3) The trial judge erred in holding that the presumption of death order issued by the High Court had no evidential value and did not prove that Merlhat died on 4 September 1952. That order had not been set aside and remained valid and binding on all parties. It was conclusive proof that Merlhat had died on that date. Once a presumption of death order was granted it was for the person asserting that the deceased person was still alive to prove that assertion. In this regard, the respondents failed to prove that Merlhat was still alive in 2001, the year he purportedly transferred the land to Chandaran. Proof of Merlhat's death was also established by the issuance of the grant of letters of administration de

bonis non which clearly stated that Merlhat's date of death was 4 September 1952 (see paras 21 & 23–25).

(4) The trial judge erred in holding that the appellant had no locus standi to bring the action. The appellant had the necessary locus standi since he was the sole beneficiary of Sikandar's estate and it was never put to him that he was not the lawful grandson of Sikandar. The appellant was also the administrator de bonis non of Sikandar's estate and that capacity was never challenged by the first, second and fifth respondents (see paras 29–31).

(5) The trial judge completely overlooked the fact that under ss 60(4)(a) and (6) of the Probate and Administration Act 1959, it was mandatory for an administrator to obtain the Court's consent to execute any transfer of a deceased estate's property failing which the transfer 'shall be voidable at the instance of any person interested in the property'. Since there was no Court order that permitted the transfer of the land in the instant case, the purported transfer from Merlhat to Chandaran, if at all it took place, was void and liable to be set aside (see paras 32–33).

(6) Chandaran's title to the property was the result of the use of an insufficient and void instrument and was therefore defeasible, being tainted with fraud. The first, second and fifth respondents provided no proof that Chandaran was a purchaser in good faith for valuable consideration. Section 340(3) of the National Land Code had no application as Chandaran was an immediate purchaser. Hence, neither Chandaran nor his beneficiaries obtained good title to the land from the beginning. In the premises, Chandaran held the property as constructive trustee for and on behalf of the appellant (see paras 34–36).

[Bahasa Malaysia summary

Sikandar a/l Fajar Ellahi ('Sikandar') adalah pemilik asal sebidang tanah ('tanah tersebut'). Apabila Sikandar meninggal dunia pada 1940, Merlhat Han ('Merlhat') telah memohon untuk dan memperoleh pemberian surat pentadbiran ('SP') harta pusaka Sikandar pada 1941. Merlhat kemudian telah memohon untuk tanah tersebut didaftarkan atas namanya sebagai pentadbir. Merlhat meninggal dunia pada 4 September 1952 meninggalkan harta pusaka Sikandar tidak ditadbir. Pada Januari 2016, perayu, yang merupakan cucu lelaki Sikandar, telah memperoleh pemberian SP de bonis non untuk harta pusaka Sikandar berdasarkan pemberian SP yang telah diperolehi oleh Merlhat pada 1941. Selepas membuat carian di pejabat tanah, perayu mendapati bahawa menurut memorandum pindah milik tanah tersebut bagi maksud pindah milik oleh Merlhat pada 29 Mei 2001 kepada Chandaran a/l Narayanasamy ('Chandran'). Berikutan kematian Chandran pada 2002 tanah tersebut telah dipindah milik kepada Annapoorany a/p Letchumanan dan selepas itu 13/15 bahagian hartanah tersebut dipindah milik kepada responden

kelima manakala 2/15 bahagian telah dipindah milik kepada responden keenam. Tindakan perayu ini telah mengetepikan semua kepentingan dan pemilikan bagi maksud responden-responden (kecuali responden-responden ketiga dan keempat) ke atas tanah tersebut atas alasan penipuan, pemalsuan dan ketidaksahan. Perayu menegaskan bahawa oleh kerana Merlhat telah meninggal dunia pada 4 September 1952, dia tidak mungkin telah memindah milik tanah tersebut kepada Chandaran pada 29 Mei 2001. Tambahan pula, tiada perintah mahkamah untuk menunjukkan Merlhat, sebagai pentadbir harta pusaka Sikandar, telah memperoleh persetujuan mahkamah untuk memindah milik atau menguruskan hartanah tersebut. Nombor kad pengenalan Merlhat pada alat pindah milik bagi maksud tanah tersebut yang menyebelahi Chandaran juga tidak wujud. Perayu berhujah bahawa responden-responden berkaitan dengan itu telah memegang tanah tersebut semata-mata sebagai pemegang-pemegang amanah konstruktif untuk harta pusaka Sikandar. Hakim perbicaraan menolak tuntutan perayu dengan memutuskan bahawa dia telah gagal membuktikan atas imbangan kebarangkalian dan bahawa tuntutan itu telah luput had masa. Dalam rayuan ini terhadap keputusan, perayu berhujah bahawa hakim perbicaraan terkhilaf kerana memutuskan bahawa tindakan itu telah luput had masa, bahawa perayu tidak mempunyai locus standi untuk memulakan tindakan itu, bahawa pindah milik tanah tersebut kepada Chandaran tidak dicemari dengan penipuan dan/atau ketidaksahan dan bahawa hak milik Chandaran kepada hartanah itu tidak boleh disangkal.

Diputuskan, sebulat suara membenarkan rayuan, mengetepikan keputusan Mahkamah Rayuan dan memasuki penghakiman untuk perayu:

(1) Dalam kes ini, terdapat penipuan kerana jika Merlhat telah meninggal dunia pada 4 September 1952 dia tidak mungkin telah memindah milik hartanah itu kepada Chandaran pada 29 Mei 2001 (lihat perenggan 19).

(2) Seksyen 29 Akta Had Masa 1953 jelas memperuntukkan bahawa di mana tindakan berasaskan penipuan, tempoh had masa 'shall not begin to run until the plaintiff has discovered the fraud'. Kes perayu adalah bahawa dia hanya mendapati terdapat penipuan pada atau sekitar 11 Mac 2016 apabila dia membuat carian tanah ke atas hartanah tersebut dan mendapati bahawa Chandaran telah didaftarkan sebagai pemilik tanah tersebut. Bahagian penting dalam keterangan perayu ini tidak dicabar langsung dalam pemeriksaan balas dan dengan itu dianggap telah diterima. Oleh demikian, guaman ini yang telah difailkan pada 2 Disember 2016 adalah dalam tempoh had masa yang digantung sepertimana ditetapkan oleh s 29 Akta Had Masa 1953. Walaupun perayu mempunyai pengetahuan tentang kepentingan benefisialnya dalam hartanah tersebut sejak 1952, masa bagi tujuan Akta Had Masa tidak bermula sehingga selepas penipuan itu diketahui. Sebelum itu, perayu tiada sebab untuk mensyaki bahawa terdapat apa-apa urusan

penipuan yag melibatkan tanah terseut kerana ia telah didaftarkan atas nama Merlhat sebagai harta pusakan Sikandar (lihat perenggan 18 & 26–28).

(3) Hakim perbicaraan terkhilaf dalam memutuskan bahawa perintah anggapan kematian telah dikeluarkan oleh Mahkamah Tinggi tidak mempunyai nilai keterangan dan tidak membuktikan bahawa Merlhat telah meninggal duia pada 4 September 1952. Perintah tersebut tidak diketepikan dan masih sah dan mengikat semua pihak. Ia adalah bukti konklusif bahawa Merlhat telah meninggal dunia pada tarikh tersebut. Setelah perintah anggapan kematian itu diberikan ia adalah untuk orang yang menegaskan bahawa si mati masih hidup untuk membuktikan penegasan tersebut. Dalam hal ini, responden telah gagal untuk membuktikan bahawa Merlhat masih hidup pada 2001, tahun yang dia dikatakan telah memindah milik tanah tersebut kepada Chandaran. Bukti kematian Merlhat juga telah dibuktikan dengan keluaran pemberian surat-surat pentadbiran de bonis non yang jelas menyatakan tarikh mati Merlhat adalah pada 4 September 1952 (lihat perenggan 21 & 23–25).

(4) Hakim perbicaraan terkhilaf dalam memutuskan bahawa perayu tidak mempunyai locus standi untuk memulakan tindakan. Perayu mempunyai locus standi yang perlu kerana dia adalah benefisiari mutlak hartanah Sikandar dan ia tidak pernah dikemukakan kepadanya bahawa dia bukan cucu lelaki sah Sikandar. Perayu juga adalah pentadbir de bonis non hartanah Sikandar dan kapasiti tersebut tidak dicabar oleh responden-responden pertama, kedua dan kelima (lihat perenggan 29–31).

(5) Hakim perbicaraan langsung terlepas pandang fakta bahawa di bawah ss 60(4)(a) dan (b) Akta Probat dan Pentadbiran 1959, ia adalah mandatori untuk pentadbir memperoleh persetujuan mahkamah untuk melaksanakan apa-apa pindah milik hartanah si mati dan jika gagal pindah milik itu 'shall be voidable at the instance of any person interested in the property'. Oleh kerana tiada perintah mahkamah yang membenarkan pindah milik tanah tersebut dalam kes ini, pindah milik yang dikatakan daripada Merlhat kepada Chandaran, jika ia ada pun berlaku, adalah tidak sah dan patut diketepikan (lihat perenggan 32–33).

(6) Hak milik Chandaran ke atas hartanah itu adalah hasil penggunaan alat yang tidak mencukupi dan tidak sah dan dengan itu boleh disangkal, dicemari dengan penipuan. Responden-responden pertama, kedua dan kelima tidak mengemukakan bukti bahawa Chandaran adalah pembeli berniat baik untuk balasan bernilai. Seksyen 340(3) Kanun Tanah Negara tidak terpakai kerana Chandaran adalah pembeli sedia ada. Justeru, Chandaran mahu pun benefisiarinya tidak memperoleh hak milik yang sah ke atas tanah tersebut dari mula lagi. Atas premis ini,

Chandaran memgang hartanah tersebut sebagai pemegang amanah konstruktif untuk dan bagi pihak perayu (lihat perenggan 34–36).]

Cases referred to

Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & ORS and another appeal [1995] 2 MLJ 770, CA (refd)
Eagleburgmann (M) Sdn Bhd v Fabina Properties Sdn Bhd [2015] MLJU 760, HC (refd)
Gulf Business Construction (M) Sdn Bhd v Israq Holding Sdn Bhd [2010] 5 MLJ 34, CA (refd)
Kamarulzaman bin Omar & Ors v Yakub bin Husin & Ors [2014] 2 MLJ 768, FC (refd)
L Aruul a/l S Lurthusamy v Ringganazall a/l Ponningilee & Anor [2017] 2 MLJ 51, CA (refd)
Mahendar a/p Sucha Singh & Anor v Emile [2000] 7 MLJ 691, HC (refd)
Osman bin Bachit, Re [1997] 4 MLJ 445, HC (refd)
Tan Ying Hong v Tan Sian San & Ors [2010] 2 MLJ 1, FC (refd)
Veerapan a/l Mottaian v Kanni Marial a/p Arulapan (as representative of the estate of Arulappan a/l Michael (deceased) [2016] MLJU 892, HC (refd)
Zaharah bt A Kadir (acting as the authorised representative of Abdul Kadir bin Ami, deceased) v Ramunia Bauxite Pte Ltd & Anor [2012] 1 MLJ 192, CA (refd)

Legislation referred to

Evidence Act 1950 s 108
Limitation Act 1953 ss 6(1)(a), 9, 29
National Land Code s 340(3), Form 14A
Probate and Administration Act 1959 s 60(4)(a) (6)

Appeal from: Civil Suit No BA-21NCVC-83–12 of 2016 (High Court, Shah Alam)

Krishna Dallumah (Venka Arun and Carly Yap with him) (Ven & Assoc) for the appellant.
M Manoharan (M Manoharan & Co) for the first, second and fifth respondents.
Nik Haize Azlin bt Nabidin (State Legal Advisor's Assistant, Selangor State Legal Advisor's Office) for the third and fourth respondents.

Abdul Rahman Sebli JCA:

[1] We allowed this appeal by a unanimous decision after hearing arguments by both sides. We set aside the decision of the High Court and entered judgment for the appellant in terms of para 39 of the statement of claim except for paras (t) and (u). These are the grounds of our decision.

[2] The facts are as follows. Sikandar s/o Fajar Ellahi ('Sikandar') was the original proprietor of a piece of land held under GM2235 Lot 1208 Mukim Kelanang, District of Kuala Langat (previously held under GM537 Lot 1208 Mukim Kelanang, District of Kuala Langat) ('the property'). A

[3] Upon Sikandar's death on 20 September 1940, one Merlhat Han s/o Ramlhat Han ('Merlhat') applied for letters of administration for Sikandar's estate and obtained the grant on 13 November 1941. B

[4] On 2 March 1950, Merlhat applied for the transmission of the property to himself in his capacity as representative. Merlhat died on 4 September 1952, leaving the estate unadministered. C

[5] On 29 May 2001 (almost 50 years after his death), Merlhat purportedly transferred the property to one Chandaran a/l Narayanasamy ('Chandaran'). Chandaran passed away on 6 March 2002. D

[6] On 26 April 2016, the property was transmitted to one Annapoorany a/p Letchumanan ('Annapoorany'). E

[7] On 1 February 2017, 13/15 part of the property was transmitted to one Mageswary a/p Chandran and 2/15 part was transferred to one Sundara Rajan a/l Muniandy (the sixth respondent) as trustee.

[8] The appellant, acting as administrator for Sikandar's estate, commenced action against all the respondents but in the case of the third and fourth respondents, they were named as parties for the sole purpose of carrying out any order that the court might give in relation to the case. F

[9] The appellant's cause of action was premised on acts of forgery, fraud, illegal and/or unlawful means using void and/or insufficient instruments to effect the transfer of the property to Chandaran due to the following: G

(a) Merlhat had died on 4 September 1952. Therefore, it was impossible for him to have effected the transfer of the property to Chandaran on 29 May 2001; H

(b) Merlhat being an administrator would have to obtain the previous permission of the court to deal with or to transfer the property. However, no such permission or order was given; and

(c) Merlhat's IC number on the instrument of transfer (Form 14A) was non-existent. I

[10] The appellant therefore contended that:

A (a) the interest and ownership of the respondents over the property is defeasible, void ab initio, illegal and should be set aside; and

(b) the respondents were at all material times holding the property on trust as constructive trustees on behalf of Sikandar's estate.

B

[11] At the conclusion of the trial, the learned trial judge dismissed the appellant's claim with costs. It was his finding that fraud had not been proved by the appellant on the balance of probabilities and that in any event the appellant's claim was time barred. The appellant's appeal was grounded on the C following complaints:

(a) the learned trial judge erred in holding that the appellant's action is barred by limitation;

(b) the learned judge erred in holding that the appellant lacked locus standi D to bring this action;

(c) the learned trial judge erred in holding that the transfer of the property to Chandaran was not tainted with fraud and/or illegality; and

(d) the learned trial judge erred in holding that Chandaran's title to the E property is indefeasible.

[12] On the first issue of limitation, the learned trial judge's finding was that the appellant had been indolent since 1952 to recover the property and F therefore the claim is barred by limitation. This is what the learned trial judge said at para 41 of his grounds of judgment:

> (42) To determine the issue at hand. PW1's evidence on when he discovered the alleged fraudulent transfer has to be scrutinised. According to PW1's version, Merlhat informed PW1 in 1952 that PW1 was his grandson and had rights to the G former's property in Kuala Langat but it would appear that PW1 did nothing about it since then until the commencement of this suit.

[13] In para 44, the learned judge referred to *Mahendar a/p Sucha Singh & Anor v Emile* [2000] 7 MLJ 691 for the proposition that where the defendant H relies on the defence of limitation and there is nothing before the court to suggest that the plaintiff can escape from it, the claim must necessarily fail.

[14] Section 29 of the Limitation Act 1953 ('the Limitation Act') provides as I follows:

> *29 Postponement of limitation period in case of fraud or mistake*
>
> Where, in the case of any action for which a period of limitation is prescribed by the Act, either —

(a) the action is based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent; or

(b) the right of action is concealed by the fraud of any such person as aforesaid; or

(c) the action is for relief from the consequences of a mistake,

the period of limitation shall not begin to run until the plaintiff has discovered the fraud or mistake, as the case may be, or could with reasonable diligence have discovered it:

[15] The learned trial judge referred to this provision but without considering whether it applied to the facts of the case. Instead, His Lordship focused his mind on ss 6(1)(a) and 9 of the Limitation Act 1953 and went on to say:

(41) It is trite law that the strict and mandatory provisions of s 6(1)(a) and s 9 of the LA ought to be given effect to and cannot be circumvented in the case of an indolent Plaintiff who sleeps on his rights for an inordinate length of time, which the defence alleged occurred in the case of the present Plaintiff.

[16] In taking this view, the learned judge relied on the following passage in the High Court case of *Veerapan a/l Mottaian v Kanni Marial a/p Arulapan (as representative of the estate of Arulappan a/l Michael (deceased)* [2016] MLJU 892 where Yeoh Wee Siam J (as she then was) said:

It is obvious that the plaintiff was sleeping on his rights since 1988. The strict provisions of s 6(1)(a) and s 9 of LA ought to be given effect, and not be bent and stretched to validate a claim which is filed 28 years after the cause of action, or the right to recovery of the land, has arisen. Clearly, the law cannot assist the indolent.

[17] With due respect to the learned judge, we must say at the outset that his reliance on the case is misconceived for the simple reason that it was not a case on s 29 of the Limitation Act 1953. For the same reason, his reliance on *Mahendar a/p Sucha Singh* is likewise misconceived.

[18] Section 29 of the Limitation Act 1953 is clear, that where the action is based on fraud of the defendant, the period of limitation 'shall not begin to run until the plaintiff has discovered the fraud'. Thus, the question for the learned trial judge to consider was whether there was fraud and if so, when was the fraud discovered.

[19] Was there fraud in the transfer of the property? We think so, based on the fact that Merlhat died on 4 September 1952 and could not therefore have transferred the property to Chandaran on 29 May 2001. Marlhat's death had been established through the following documentary evidence:

A (a) the presumption of death order issued by the High Court which states that Merlhat died on 4 September 1952; and

(b) Merlhat's death certificate showing that he had passed away since 4 September 1952.

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[20] The learned trial judge however ruled that Marlhat's death had not been proved, for the following reasons:

(a) the presumption of death order does not prove the date of death: *Re Osman bin Bachit* [1997] 4 MLJ 445; and

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(b) Merlhat's death certificate could not be admitted in evidence pursuant to s 90 of the Evidence Act 1950.

[21] We agree with learned counsel for the appellant that the learned trial D judge erred in holding that the presumption of death order had no evidential value and did not provide proof that Merlhat died on 4 September 1952.

With due respect to the learned judge, his reliance on *Re Osman bin Bachit* is E misplaced as in that case the presumption of death order had not been obtained, unlike the present case where the order had been procured. Besides, it was a case on s 108 of the Evidence Act 1950.

[22] Contrary to the learned trial judge's reading of the case, *Re Osman bin* F *Bachit* is in fact authority for saying that the date of death could be proven in an application for the grant of letters of administration. This is clear from the learned judge's observation at p 450:

> in my opinion, the proper course for the appellant to adopt would be to apply for letters of administration and prove the death of the deceased in that proceedings.

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[23] The presumption of death order has not been set aside. Therefore, its remains a valid and binding order on all parties: *Gulf Business Construction (M) Sdn Bhd v Israq Holding Sdn Bhd* [2010] 5 MLJ 34 *L Aruul a/l S Lurthusamy* H *v Ringganazall a/l Ponningilee & Anor* [2017] 2 MLJ 51 (CA). The order provides conclusive proof that Merlhat had died on 4 September 1952.

[24] Once a presumption of death order is granted, it is for the person asserting otherwise to prove that the person is alive. In this regard, the I respondents failed to produce any evidence to prove that Merlhat was still alive in 2001, the year he purportedly transferred the property to Chandaran.

[25] Proof of Merlhat's death had also been established by the issuance of the grant of letters of administration. The De Bonis Grant clearly states that

Merlhat's date of death is 4 September 1952. A

[26] The question that follows is, when did the appellant discover the fraud? The appellant's case was that he only discovered the fraud on or about 11 March 2016 when he conducted a land search at the land office, which showed that Chandaran was registered as proprietor of the property. This crucial part of the appellant's evidence was not challenged at all in cross-examination and is therefore deemed to be admitted: *Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & ORS and another appeal* [1995] 2 MLJ 770. B C

[27] Therefore the present suit, which was filed on 2 December 2016, was within the suspended limitation period prescribed by s 29 of the Limitation Act 1953. Although the appellant had knowledge of his beneficial interest in the property since 1952, time for purposes of the Limitation Act 1953 did not begin to run until after the fraud was discovered. D

[28] The appellant had no reasonable suspicion of any fraudulent activity on the property as it was registered in the name of Merlhat as representative of Sikandar's estate, and Merlhat had passed away on 4 September 1952. The law does not place the onus on an innocent party to constantly be on the lookout for fraudulent dealings where there is no reason to suspect fraud. E

[29] With regard to the issue of locus standi, we found the evidence to be clear that the appellant is the sole beneficiary of Sikandar's estate and therefore had the necessary locus standi to bring this action. In any event, it was never put to the appellant that he is not the lawful grandson of Sikandar. F

[30] The appellant obtained the grant of the letters of administration de bonis non dated 27 January 2016 for Sikandar's estate vide Petition No 31NCVC-588–12 at the Shah Alam High Court which was premised on the petition for letters of administration by Merlhat dated 20 June 1941 and the grant of letters of administration dated 13 November 1941 obtained by Merlhat. The first, second and fifth respondents did not file any proceedings to set aside or revoke the grant. G H

[31] From the documents, the appellant's name and age (six) is clearly spelt out in the petition for the letters of administration and the name and age correspond with the name and age of the appellant. The learned trial judge was therefore wrong in holding that the appellant had no locus standi to bring this action. I

[32] It was also the appellant's pleaded case that there was no previous permission from the court for the transfer of the property by Merlhat to

Chandaran. This was completely overlooked by the learned trial judge. Under ss 60(4)(a) and (6) of the Probate and Administration Act 1959, it is mandatory to obtain the previous permission of the court before an administrator of an estate can execute any transfer of the estate's property failing which the transfer 'shall be voidable at the instance of any person interested in the property'.

[33] Since there was no previous permission of the court for the transfer of the property, the purported transfer of the property from Merlhat to Chandaran, if at all it took place, is void and liable to be set aside.

[34] The appellant had also pleaded the issue of constructive trustee but this too was completely overlooked by the learned trial judge, probably due to his finding that Chandaran had good title to the property. It is clear that Chandaran's title to the property was a result of insufficient or void instruments and is therefore defeasible, being tainted with fraud.

[35] The first, second and fifth respondents on their part provided no proof that Chandaran was a purchaser in good faith for valuable consideration. In any event s 340(3) of the National Land Code has no application as Chandaran was an immediate purchaser: *Tan Ying Hong v Tan Sian San & Ors* [2010] 2 MLJ 1 (FC).

[36] Therefore, neither Chandaran nor his beneficiaries obtained good title to the property from the beginning: *Kamarulzaman bin Omar & Ors v Yakub bin Husin & Ors* [2014] 2 MLJ 768; *Zaharah bt A Kadir (acting as the authorised representative of Abdul Kadir bin Ami, deceased) v Ramunia Bauxite Pte Ltd & Anor* [2012] 1 MLJ 192; *Eagleburgmann (M) Sdn Bhd v Fabina Properties Sdn Bhd* [2015] MLJU 760. In the premises Chandaran was holding the property as constructive trustee for and on behalf of the appellant.

[37] It was for all the reasons aforesaid that we allowed the appeal and entered judgment for the appellant. Costs of RM50,000 here and below was awarded to the appellant subject to payment of the allocator fee.

Unanimously appeal allowed, setting aside the High Court's decision and entering judgment for the appellant

Reported by Ashok Kumar